IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4329 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASLAM @ DADHI @ BABUBHAI FATEHMOHMAD RAJPUT MUSALMAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr. Anil S. Dave, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 21-5-99 passed by

respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that in all three prohibition cases were registered against the petitioner on 1-1-98, 19-2-98 and 19-3-1999 at Nashabandhi Station (East) and Rakhial Police Station respectively. That in all three cases, the country made liquor was seized from the possession of the petitioner / detenu. Over and above that two witnesses on assurance of their anonymity have given statement dated 20-5-99 and 21-5-99 regarding the anti social activities of the petitioner and have narrated the alleged incidents dated 25-4-99 and 1-5-999 respectively. That both the statements have been verified by the detaining authority on 21-5-99 on the date on which the impugned order is passed. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner was in police custody as stated in the grounds of detention in respect to offence registered vide C.R. No : 5007/99 at Rakhial Police Station. Despite the said fact and the fact that the petitioner was released on bail in two earlier cases which are pending for trial in the Court. The detaining authority has failed to consider the aspect of opposing or claiming of cancellation of bail as available under Section 437(5) of CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under

Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the detaining authority has observed in penalty mate para that the petitioner is released on bail in two offences registered against him and is in police custody in respect to third offence. However, by passage of time, in all possibilities, the petitioner will apply for bail and having got himself released on bail, is likely to continue his anti social activities. The said statement shows that the detention order has been passed merely on apprehension and not on the fact. That non consideration of claiming of cancellation of bail granted in earlier two cases which were pending for trial in the Court, clearly suggests non application of mind vitiating the subjective satisfaction and rendering the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 21-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - ASLAM @ DADHI @ BABUBHAI FATEHMOHMAD RAJPUT MUSALMAN is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

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